

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRENT STRAMARA, Administrator : CIVIL ACTION
of the Estate of :
CHRISTOPHER V. STRAMARA, :
deceased :
 :
v. :
 :
DORSEY TRAILERS, INC. : NO. 96-CV-7361
_____ :

FRED M. ELLMAKER, JR. : CIVIL ACTION
Administrator of the Estate :
of RAYMOND ELLMAKER, deceased :
and MELISSA RISSE, Mother :
and Natural Guardian of :
RAYMOND MICHAEL ELLMAKER :
and ROCHELLE LYNN ELLMAKER, :
Minor Children of the Deceased: :
RAYMOND ELLMAKER :
 :
v. :
 :
DORSEY TRAILERS, INC. : NO. 96-CV-7362

MEMORANDUM AND ORDER

J.M. KELLY, J.

SEPTEMBER 18, 1998

Presently before the Court is Defendant, Dorsey Trailers, Inc.'s Motion to Dismiss or Stay the Federal Actions (Document No. 20). A hearing was held on this motion today. For the reasons set forth below, this motion is denied.

Dorsey Trailers has moved to dismiss this action under the test established by the Supreme Court in Moses H. Cone Hospital v. Mercury Construction Corp., 460 U.S. 1, 15-16, 25-27

(1981).¹ Dorsey Trailers argues in its memoranda of law and at the hearing today that Lancaster County is a more convenient forum, maintaining the federal action would create a piecemeal litigation, some of the state court suits began before those filed in federal court, Pennsylvania law applies, and the state court will provide an adequate forum.

Before the Court undertakes the Moses H. Cone analysis Dorsey Trailers advocates, however, the Court must determine whether the cases before it and those pending in state court are truly duplicative. See Trent v. Dial Med. of Florida, Inc., 33 F.3d 217, 223-24 (3d Cir. 1994). Cases are sufficiently parallel to warrant abstention analysis when they involve identical parties and claims. Id. at 223 (citing LaDuke v. Burlington N. R.R. Co., 879 F.2d 1556, 1559 (7th Cir. 1989)).

The federal actions and those in state court do not involve the same issues or parties and therefore are not truly duplicative. In the cases before the Court, Plaintiffs have brought products liability, negligence, and breach of warranty claims against the truck manufacturer. Plaintiffs' state court

¹The six factors identified in Moses H. Cone Hospital are: 1) which court first assumed jurisdiction over the property that is the subject of the dispute; 2) the inconvenience of the federal forum; 3) the desirability of avoiding a piecemeal litigation; 4) the order in which jurisdiction was obtained by the concurrent forums; 5) the source of law that will provide the rules of decision; and 6) the adequacy of the state court proceeding to protect the parties' rights. Id.

actions, on the other hand, are based on negligence theories against the owner of the truck and its driver, who are not involved in the federal court action.² Further, the state court claims include claims by plaintiffs not presently before the Court against defendants also not involved in the federal court action. Accordingly, these cases are not parallel and are not truly duplicative, and under Trent this Court is not required to undertake the Moses H. Cone abstention analysis. This Court, therefore, denies Dorsey Trailers' motion.

²These defendants have joined Dorsey Trailers in the Lancaster County action. Plaintiffs separately have sued Dorsey Trailers in Schuylkill County, although those cases apparently have not progressed nearly as far as the ones before the Court.

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Defendant's Motion to Dismiss / Stay the Federal Action is
DENIED.

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JAMES MCGIRR KELLY, J.